IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 32943 of 2006(V)

OS.299/2005 of MUNSIFF, KASARAGOD

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PETITIONER:

H.RAMADEVI, W/O.LATE H.GOPALAKRISHNA
KADAMBALITHAYA, RESIDING AT MOSAVALIKE,
BELLUR VILLAGE, KASARAGOD TALUK,
P.O.BELLUR.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE
SMT.O.K.SANTHA

RESPONDENTS:

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1. LINGAPPA, S/O.KORAGA,
RESIDING AT MOSAVALIKE, BELLUR VILLAGE,
KASARAGOD TALUK, P.O.BELLUR.

2. RAVI, S/O.NARAYANA,
RESIDING AT MOSAVALIKE, BELLUR VILLAGE,
KASARAGOD TALUK, P.O.BELLUR.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.32943 OF 2006

Dated 12th December 2006

JUDGMENT

Petitioner is plaintiff in O.S.299/2005 on the file of Munsiff court, Kasargod. Respondents are defendants. Petitioner is challenging Ext.P5 order passed by learned Munsiff in I.A.1516/06 filed by petitioner under Order XXVI of Rule 10 of Code of Civil Procedure to set aside the report submitted by the commissioner.

2. Learned counsel appearing for petitioner was heard. Arguments of learned counsel appearing for petitioner was that non existence of road could only be proved by existence of telephone post and trees standing at the alleged road and these were omitted to be taken note of by the Commissioner and learned Munsiff should have at least remitted the report back to the Commissioner and Ext.P5 order is to be interfered with. It was also argued that commissioner has not complied with the earlier directions issued by the court.

2. Ext.P5 order shows that report was remitted back to the Commissioner twice and present report is the third report filed. Learned Munsiff after a detailed consideration of the contentions raised by petitioner found that there is no reason either to set aside the report or to remit the report. Question is whether invoking the extra ordinary jurisdiction under Article 227 of Constitution of India any interference is warranted.

3. Ext.P5 is an interlocutory order. Learned Munsiff has to dispose the suit untrammeled by Ext.P5 order. Petitioner is entitled to examine the commissioner at the time of evidence. If after examining the commissioner the court finds that the report is not reliable or any additional material is necessary fact that Ext.P5 order was passed, will not disentitle the court from exercising the powers either to remit report or to appoint another commissioner. Petitioner is also entitled to file application, if circumstances warranted.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.